IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.107 OF 2006

The Golden Queries & Anr. ...Appellants

Versus

Jayant Shivajirao Sanap & Ors. ...Respondents

AND
CIVIL REVISION APPLICATION NO.21 OF 2006

The Golden Queries & Anr. ...Applicants

Versus

Jayant Shivajirao Sanap & Ors. ...Respondents

Shri P.N.Joshi for the Appellants/Applicants.

Shri M.M.Sathaye for the Respondent Nos.1 and 2.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 16, 2007.

ORAL JUDGMENT:

1. By consent of the Advocates appearing for the parties, taken up for final hearing. The Appeal From Order and Civil Revision Application arise out of the same suit and therefore, the same can be conveniently disposed of by a common judgment and orer. For the sake of convenience, the parties are hereinafter referred to with reference to their status in the trial Court. The Appeal From Order is preferred by the original Defendant Nos.1 and 3 for challenging the judment and order dated 05th January, 2006 passed by the learned Civil Judge, Senior Division, Nasik below application for temporary

injunction at Exhibit 5 taken out by the Plaintiffs. The same Defendants have filed the Civil Revision Application for challenging the judgment and orer dated 19th December, 2005 passed by the trial Court by which the preliminary issue of jurisdiction has been answered in favour of the Plaintiffs.

2. The suit is filed under the provisions of Transfer of Property Act, 1882. The suit relates to a land more particularly described in paragraph No.1 of the plaint. The Plaintiffs claimed to have purchased the suit land by a registered Conveyance Deed dated 16th July, 1999 from their predecessor-in-title one Shri Vithoba Bhimaji Borade. Prior to the execution of the said Sale Deed, the predecessor of the Plaintiffs had executed a lease in respect of the said land in favour of the Defendants. The first Defendant is a partnership firm and the second to fifth Defendants are stated to be its partners.

3. The lease was executed on 11th November, 1992 for a period of eleven years. The Plaintiffs claim that they have stepped into the shoes of the lessor. There is a clause in the Lease Deed which provides that by consent of the lessor and lessee, the term of the lease can be extended. According to the Plaintiffs the term of the lease ended on 31st December, 2003 and they had

informed the Defendants that they were not agreeable to extend the term of lease. The case of the Plaintiffs is that the lease stood terminated by efflux of time.

4. According to the conditions incorporated in the lease, the Defendants were permitted to carry out quarrying operations. The case of the Plaintiffs is that quarrying operations were carried out by the Defendants without obtaining permission/licence from the concerned authority.

5. An Application for injunction was made for restraining the Defendants from carrying out any quarrying operations and from running a crusher machine. The contention of the Plaintiffs was that after the expiry of lease, the Defendants had no authority to carry on and continue the quarrying operations. During the pendency of the said Application for temporary injunction, an objection was raised by Defendants to the jurisdiction of the trial Court to entertain the suit. The Application for temporary injunction was allowed. Being agrieved by the said order, the first and third Defendants preferred an Appeal to this Court. By judgment and order dated 26th October, 2005, the Appeal was allowed by passing an order of remand and the trial Court was directed to frame a preliminary issue of jurisdiction and to decide the same in view of section

9A of the Code of Civil Procedure, 1908.

6. As per the order passed by this Court, by order dated 14th November, 2005 a preliminary issue was framed and the same has been decided in favour of the Plaintiff by order dated 19th December, 2005 which is the subject matter of challenge in the revision Application.

7. The Application at Exhibit 5 for temporary injunction was allowed by order dated 05th January, 2006 and temporary injunction was granted against the Defendants from carrying on any quarrying work in the suit land.

8. Shri Joshi appearing for the first and third Defendants submitted that so long as decree for possession was not passed, the Defendants continued to be in possession of the suit land and therefore, by granting interim relief the trial Court could not have prevented the Defendants from using the land. He submitted that the purpose of lease was to allow the Defendants to carry on quarrying operations in the land and so long as the decree for possession was not passed, such injunction could not have been granted. In so far as issue of jurisdiction is concerned, he submitted that the trial Court had no jurisdiction to entertain and try the suit. The learned Advocate for the original

Plaintiffs has supported the impugned orders.

9. In so far as issue of jurisdiction is concerned, it is obvious that the issue of jurisdiction was framed as per the directions of this Court by invoking the section 9A of the Code of Civil Procedure, 1908. In absence of section 9A of the said Code, there was no occasion for the trial Court to hear and decide the issue of jurisdiction as a preliminary issue. In view of the decision of this court in the case of **Solapur Social Urban Co-operative Bank Ltd Vs. Nigam A. Mannan Beskar (2006(4) Bombay Cases Reporter Page 217)**, section 9A could not have been invoked by the Petitioner as the view taken by this Court is that section 9A has been repealed by virtue of the amendment to the Code of Civil Procedure, 1908 brought into force with effect from 01st July, 2002. It is true that the said issue is pending for adjudication before a Division Bench of this Court. However, Division Bench has not yet upset the law laid down by the learned single Judge of this Court. Therefore there was no occasion to invoke section 9A of the said Code for deciding a preliminary issue of jurisdiction even before the decision of application for temporary injunction at Exhibit 5. Only on this ground, the order dated 19th December, 2005 on preliminary issue will have to be quashed and set aside and the trial Court will have to be directed to decide the issue of

jurisdiction at an appropriate stage.

10. So far injunction is concerned, the case of the Plaintiffs is that the lease has come to an end by efflux of time on 31st December, 2003. It is alleged in the suit that the quarrying operation was continued by the Defendants without there being a proper permission/licence obtained from the competent authority. It is not a question of a simple user of the land. What the Defendants desire to do is to carry on quarrying operation by removing large quantity stones from the suit land. Pending the final decision of the suit for possession, the trial Court has restrained the Defendants from carrying out the operation. Considering the factual aspect of the case that the lease had come to an end by efflux of time and considering the nature of use sought to be made by the Defednants, the learned trial Judge has passed a discretionary order of preventing the quarrying operations on the suit land till the final disposal of the suit. The order passed by the trial Court is a discretionary order with a view to ensure that the suit land is maintained in the same condition in which it was in existence on the date of institution of the suit. It is very difficult to find fault with the discretionary order passed by the trial Court which is now operating against the Defendants from January 2006. No case is made out for intereference

with the said order. However, hearing of the suit deserves to be expedited.

11. Hence, I pass the following order:

(i) Appeal From Order No.107 of 2006 is dismissed with no orders as to costs.

(ii) Civil Revision Application No.21 of 2006 is partly allowed. The order dated 19th December, 2005 is quashed and set aside. The trial Court is directed to decide the issue of jurisdiction at an appropriate stage and all contentions of the parties on said issue are expressly kept open.

(iii) The learned trial Judge is directd to decide the suit as expeditiously as possible and in any event on or before 31st December, 2007.

(iv) All contentions of the parties on the merits of the suit are expressly kept open.

(v) The trial Court is bound to decide the suit without being influenced by the order dated 05th January, 2006 and confirmation thereof by this Court.

(vi) Writ to be sent immediately.

JUDGE